

5/16/2014 1:14:59 PM
Chris Daniel - District Clerk Harris County
Envelope No. 1286846
By: CANDICE ARNOLD

CAUSE NO. 2014-27085

CHIMNEY INVESTMENTS, LTD.,	§	
PLAINTIFF	§	
	§	IN THE 190TH JUDICIAL DISTRICT COURT
VS.	§	
	§	
AMERICAN DRIVELINE CENTERS, INC.,	§	HARRIS COUNTY, TX
ET AL,	§	
DEFENDANT	§	

AFFIDAVIT OF SERVICE

ON Thursday, May 15, 2014 AT 11:02 AM - CITATION, PLAINTIFF'S ORIGINAL PETITION **CAME TO HAND.**

ON Friday, May 16, 2014 AT 12:00 PM - THE ABOVE NAMED DOCUMENTS WERE DELIVERED TO: JEFFREY YOE (A NONRESIDENT), C/O THE TEXAS SECRETARY OF STATE, 1019 BRAZOS ST, AUSTIN, TX, 78701 BY PERSONAL SERVICE.

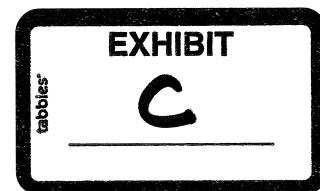
My name is BARBARA STINNETT. My address is 1201 Louisiana, Suite 210, Houston, Texas 77002, USA. I am a private process server authorized by and through the Supreme Court of Texas (SCH 1181, expires Thursday, July 31, 2014). I am in all ways competent to make this affidavit, and this affidavit is based on personal knowledge. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Travis County, Texas on Friday, May 16, 2014.

/S/ BARBARA STINNETT

DocID: P222033_3

CHIMNEY INVESTMENTS, LTD.





I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office
this June 12, 2014

Certified Document Number: 60834016 Total Pages: 1

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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5/16/2014 1:14:55 PM
Chris Daniel - District Clerk Harris County
Envelope No. 1286844
By: CANDICE ARNOLD

CAUSE NO. 2014-27085

CHIMNEY INVESTMENTS, LTD.,	§	
PLAINTIFF	§	
	§	IN THE 190TH JUDICIAL DISTRICT COURT
VS.	§	
	§	HARRIS COUNTY, TX
AMERICAN DRIVELINE CENTERS, INC.,	§	
ET AL,	§	
DEFENDANT	§	

AFFIDAVIT OF SERVICE

ON Thursday, May 15, 2014 AT 11:02 AM - CITATION, PLAINTIFF'S ORIGINAL PETITION **CAME TO HAND.**

ON Friday, May 16, 2014 AT 12:00 PM - THE ABOVE NAMED DOCUMENTS WERE DELIVERED TO: SCOTT AQUINO (A NONRESIDENT), C/O THE TEXAS SECRETARY OF STATE, 1019 BRAZOS ST, AUSTIN, TX, 78701 BY PERSONAL SERVICE.

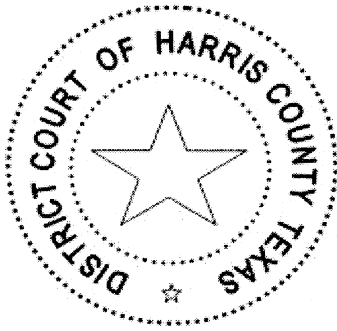
My name is BARBARA STINNETT. My address is 1201 Louisiana, Suite 210, Houston, Texas 77002, USA. I am a private process server authorized by and through the Supreme Court of Texas (SCH 1181, expires Thursday, July 31, 2014). I am in all ways competent to make this affidavit, and this affidavit is based on personal knowledge. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Travis County, Texas on Friday, May 16, 2014.

/S/ BARBARA STINNETT

DocID: P222033_2

CHIMNEY INVESTMENTS, LTD.



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office
this June 12, 2014

Certified Document Number: 60834175 Total Pages: 1

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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5/16/2014 1:14:50 PM
Chris Daniel - District Clerk Harris County
Envelope No. 1286843
By: CANDICE ARNOLD

CAUSE NO. 2014-27085

CHIMNEY INVESTMENTS, LTD.,	§	
PLAINTIFF	§	
	§	IN THE 190TH JUDICIAL DISTRICT COURT
VS.	§	
	§	
	§	HARRIS COUNTY, TX
AMERICAN DRIVELINE CENTERS, INC.,	§	
ET AL,	§	
DEFENDANT	§	

AFFIDAVIT OF SERVICE

ON Thursday, May 15, 2014 AT 11:02 AM - CITATION, PLAINTIFF'S ORIGINAL PETITION **CAME TO HAND.**

ON Friday, May 16, 2014 AT 12:09 PM - THE ABOVE NAMED DOCUMENTS WERE DELIVERED TO: AMERICAN DRIVELINE CENTERS INC (A PENNSYLVANIA CORPORATION), C/O REGISTERED AGENT NATIONAL CORPORATE RESEARCH LTD, 800 BRAZOS ST, STE 400, AUSTIN, TX, 78701 **BY PERSONAL SERVICE.**

My name is BARBARA STINNETT. My address is 1201 Louisiana, Suite 210, Houston, Texas 77002, USA. I am a private process server authorized by and through the Supreme Court of Texas (SCH 1181, expires Thursday, July 31, 2014). I am in all ways competent to make this affidavit, and this affidavit is based on personal knowledge. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Travis County, Texas on Friday, May 16, 2014.

/S/ BARBARA STINNETT

DocID: P222033_1

CHIMNEY INVESTMENTS, LTD.



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office
this June 12, 2014

Certified Document Number: 60838284 Total Pages: 1

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

2014-27085 / Court: 190

NO. _____

CHIMNEY INVESTMENTS, LTD.	§	IN THE DISTRICT COURT OF
	§	
	§	
VS.	§	HARRIS COUNTY, TEXAS
	§	
	§	
AMERICAN DRIVELINE CENTERS, INC.,	§	
JEFFREY YOE, and SCOTT AQUINO	§	____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

Plaintiff, CHIMNEY INVESTMENTS, LTD., complains of Defendants, AMERICAN DRIVELINE CENTERS, INC., JEFFREY YOE, and SCOTT AQUINO, jointly and severally, as follows:

Discovery Control Plan

1. In accordance with Rule 190.1 of the Texas Rules of Civil Procedure, discovery is intended to be conducted under Level 2 of Rule 190.

Parties

2. Chimney Investments, Ltd. is a Texas limited partnership transacting business in Harris County, Texas.

3. American Driveline Centers, Inc. is a Pennsylvania corporation which may be served with process by serving its registered agent, National Corporate Research, Ltd., 800 Brazos Street, Suite 400, Austin, Texas 78701, or wherever it may be found.

4. Jeffrey Yoe is a nonresident transacting business in Harris County, Texas. Pursuant to section 17.044(b) of the Texas Civil Practice & Remedies Code (the "Code"), the Texas Long-Arm Statute, the Secretary of State is an agent for service of process on a nonresident who engages in business in this state, but does not maintain a regular place of business in this state or a designated

agent for service of process, in any proceeding that arises out of the business done in this state and to which the nonresident is a party. Therefore, Jeffrey Yoe may be served with process by delivering duplicate copies of process upon the Secretary of State of the State of Texas who shall, upon service, immediately mail a copy of process to the nonresident by registered or by certified mail, return receipt requested. Jeffrey Yoe's address is as follows:

Jeffrey Yoe
4140 SW 149th
Oklahoma City, Oklahoma 73170

5. Scott Aquino is a nonresident transacting business in Harris County, Texas. Pursuant to section 17.044(b) of the Code, the Texas Long-Arm Statute, the Secretary of State is an agent for service of process on an nonresident who engages in business in this state, but does not maintain a regular place of business in this state or a designated agent for service of process, in any proceeding that arises out of the business done in this state and to which the nonresident is a party. Therefore, Scott Aquino may be served with process by delivering duplicate copies of process upon the Secretary of State of the State of Texas who shall, upon service, immediately mail a copy of process to the nonresident by registered or by certified mail, return receipt requested. Scott Aquino's address is as follows:

Scott Aquino
4140 SW 149th
Oklahoma City, Oklahoma 73170

Venue and Jurisdiction

6. Venue is proper in Harris County, Texas pursuant to § 15.002(a)(1) of the Code because it is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred.

7. Personal jurisdiction over the non-resident Defendants is proper because this lawsuit arises from, was connected with an act or transaction, and relates to the purposeful acts of the non-resident Defendants in Texas, and those purposeful acts directed towards Texas. The assumption of jurisdiction by this Court over the non-resident Defendants does not offend traditional notions of fair play and substantial justice. Defendants each entered into a contract with a Texas resident to perform the contract in Houston, Texas.

Rule 47 Statement

8. This is a claim for breach of contract. The damages sought are within the jurisdictional limits of the Court. At this time, Plaintiff seeks monetary damages over \$200,000 but not more than \$1,000,000.

Factual Background

9. By Triple Net Lease Agreement dated June 8, 2012 (the “Lease”), Plaintiff, Chimney Investments, Ltd., as Landlord, leased to Defendant, American Driveline Centers, Inc. (“ADC”), as Tenant, certain commercial premises consisting of approximately 6,500 square feet of space located at 5911 Chimney Rock, Houston, Texas 77081 (the “Leased Premises”). The Commencement Date of the Lease was June 1, 2012 and the term of the Lease is to expire on May 31, 2017.

10. By Assignment of Lease effective as of May 1, 2013, ADC, as Assignor, and Noyoamco, LLC (“Noyoamco”), as Assignee, assigned the Lease to Noyoamco. In connection with the Assignment, Defendants Scott Aquino (“Aquino”) and Jeffrey Yoe (“Yoe”) executed a Lease Guaranty (“Guaranty”), guaranteeing the complete and punctual payment of all amounts which are or may become due and payable under the Lease.

11. Paragraph 21 of the Lease, entitled “Assignment or Subletting by Tenant,” provides as follows:

- (d) If at any time during the initial five (5) years from the Commencement date, any assignee or sublessee shall vacate the Leased Premises for any reason, including but not limited to, eviction or abandonment, Tenant shall have the obligation to replace assignee or sublessee, assume the Lease under its original conditions, repossess the Landlord Premises [sic] and pay to Landlord for up to three (3) months past due rent.

12. Noyoamco committed an Event of Default under the Lease. On January 3, 2014, Plaintiff filed Cause No. 29375; *Chimney Investments, Ltd. vs. Noyoamco, LLC and All Occupants*; In the Justice Court of Harris County, Texas, Precinct 1, Place 2 (“Eviction Lawsuit”). Subsequent to the Eviction Lawsuit, Noyoamco vacated the Leased Premises.

13. In April 2014, Plaintiff made demand further demand on ADC for sums owing under the Lease. Despite demand, Defendants have failed and refused to honor the obligations under the Lease and Guaranty.

Suit to Enforce the Lease and Guaranty

14. Plaintiff hereby sues ADC for those amounts due and owing under the Lease. Plaintiff hereby sues Aquino and Yoe for those amounts due and owing under the Lease and Guaranty. The liability of ADC, Aquino, and Yoe is joint and several.

Attorneys’ Fees

15. Pursuant to the Lease, Guaranty, and Chapter 38 of the Code, Plaintiff seeks the recovery of reasonable and necessary attorneys fees incurred in this lawsuit.

16. Plaintiff hereby designated the undersigned attorneys, Sanford L. Dow, as its expert to testify as to reasonable and necessary attorneys’ fees incurred by Plaintiff in the preparation and trial of this lawsuit.

Condition Precedent

17. All conditions precedent necessary to maintain this action have been performed, have been waived, or have occurred.

Request for Disclosure

18. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, each Defendant is requested to disclose within fifty (50) days of service of this request, the information or material described in all of Rule 194.2.

Relief Requested

WHEREFORE, Plaintiff, CHIMNEY INVESTMENTS, LTD., prays that Defendants, AMERICAN DRIVELINE CENTERS, INC., JEFFREY YOE, and SCOTT AQUINO, be cited to appear and answer herein, and that upon final trial, CHIMNEY INVESTMENTS, LTD., be awarded judgment against Defendants, jointly and severally, for the following:

- (a) All amounts due and owing under the Lease and Guaranty at the time of trial (said damages which are within the jurisdictional limits of the Court);
- (b) Pre-judgment interest at the highest rate allowed by law or by the Lease;
- (c) Reasonable and necessary attorneys' fees;
- (d) Post-judgment interest on all of the above-referenced amounts at the highest rate allowed by law or by the Lease;
- (e) Costs of suit; and
- (f) Such other and further relief to which CHIMNEY INVESTMENTS, LTD. may show itself justly entitled.

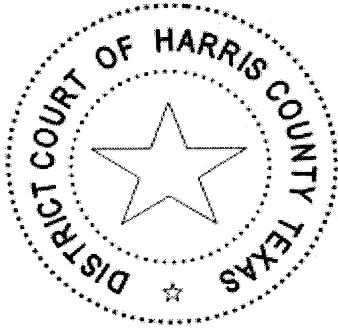
Respectfully submitted,

DOW GOLUB REMELS & BEVERLY, LLP

By: /s/ Sanford L. Dow
Sanford L. Dow
State Bar No. 00787392
Nine Greenway Plaza, 14th Floor
Houston, Texas 77046
(713) 526-3700 / FAX (713) 526-3750
dow@dowgolub.com

ATTORNEYS FOR PLAINTIFF

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I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office
this June 12, 2014

Certified Document Number: 60774876 Total Pages: 6

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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CAUSE NO. 2014-27085

CHIMNEY INVESTMENTS, LTD.,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	HARRIS COUNTY, TEXAS
AMERICAN DRIVELINE CENTERS,	§	
INC., JEFFREY YOE, and SCOTT	§	
AQUINO	§	
	§	
Defendants.	§	190TH JUDICIAL DISTRICT
	§	

DEFENDANT AMERICAN DRIVELINE CENTERS, INC.'S ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant American Driveline Centers, Inc. ("Defendant") files its Original Answer to the allegations alleged in Plaintiff's Original Petition.

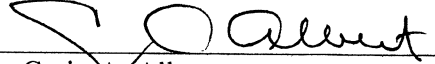
GENERAL DENIAL

Defendant generally denies each and every, all and singular, material allegations contained in Plaintiff's Original Petition, according to Rule 92 of the Texas Rules of Civil Procedure, and demands strict proof thereof of each and every allegation by a preponderance of the evidence.

WHEREFORE Defendant prays that Plaintiff takes nothing against it, and that Defendant be discharged and recover all costs, and for such other and further relief, both general and special, both in law and in equity, to which it may be justly entitled.

Respectfully submitted,

CHERRY PETERSEN LANDRY ALBERT LLP

By: 
Craig A. Albert
Texas Bar No. 00790076
Email: calbert@cplalaw.com

8350 North Central Expressway, Suite 1500
Campbell Centre Tower I
Dallas, Texas 75206
Telephone: 214.265.7007
Facsimile: 214.265.7008

GODSEY-MARTIN, P.C.

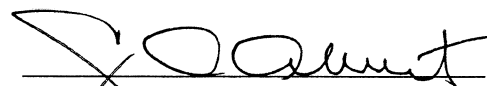
Allison Haver Gabbert
2550 North Loop West, Suite 102
Houston, Texas 77092
Telephone: (713) 446-8448

**ATTORNEYS FOR DEFENDANT
AMERICAN DRIVELINE CENTERS, INC.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on all known counsel of record via electronic filing on the 6th day of June, 2014:

Sanford L. Dow
Dow Golub Remels & Beverly, LLP
Nine Greenway Plaza, 14th Floor
Houston, Texas 77046
Telephone: (713) 526-3700
Facsimile: (713) 526-3750


Craig A. Albert